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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re R.Z., a Person Coming Under the
Juvenile Court Law.

B211871
(Los Angeles County
Super. Ct. No. TJ15071)

THE PEOPLE,

Plaintiff and Respondent,

v.

R.Z.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Catherine J. Pratt, Judge. Affirmed in part; reversed in part with directions.

Anne E. Fragasso, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Keith H. Borjon and A. Scott Hayward, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

The minor, R.Z., appeals from orders: adjudicating a Welfare and Institutions Code section 777 petition; declaring that he remain a ward of the juvenile court; and placing him in a nine-month camp community placement program. (All further statutory references are to the Welfare and Institutions Code except where otherwise noted.) We reverse the dispositional order in part.

II. BACKGROUND

On October 31, 2007, the minor was charged in a section 602 petition with grand theft of an automobile. (Pen. Code, § 487, subd. (d)(1)). On January 23, 2008, the petition was sustained. On November 13, 2007, the minor was charged in an amended section 602 petition with: grand theft of personal property (Pen. Code, § 487, subd. (a)) (count 1); unlawful driving or taking of a vehicle (Veh. Code, § 10851, subd. (a)) (count 2); and receiving stolen property (Pen. Code, § 496, subd. (a)) (count 3). Each count was alleged to be a felony. On February 14, 2008, the juvenile court sustained count 1 of the amended petition—grand theft of personal property. The juvenile court stated: “[T]he court believes the People have proven beyond a reasonable doubt with respect to count 1 that it is true; that on or about September 10th, 2007, in the county of Los Angeles, the crime of grand theft of personal property, in violation of Penal Code section 487 (a), a felony, was committed by . . . [the minor], count 1 in the amended petition.”

On February 22, 2008, the minor was before the juvenile court for disposition on the October 31, 2007 and November 13, 2007 petitions. The minor was placed in a nine-month camp community placement program. The juvenile court did not comment on the maximum term of physical confinement. The February 22, 2008 minute order, however, reflects a maximum period of confinement of 4 years and 4 months. The minor received a predisposition credit of 115 days.

Four months later, on June 13, 2008, the juvenile court granted a section 778 petition seeking the minor's placement in a drug rehabilitation treatment program at Phoenix House. On June 27, 2008, however, a bench warrant was issued for the minor. He had left the Phoenix House group home on June 25, 2008, without permission. The minor was detained pursuant to the warrant on September 3, 2008.

A section 777 petition was filed on September 9, 2008. The petition alleged the minor was in violation of his probation in that he; was arrested for burglary on September 3, 2008 (count 1); was absent without leave from the Phoenix House (count 2); and had failed to attend school (count 3). On September 30, 2008, the juvenile court sustained count 2 of the section 777 petition, which alleged the minor was absent without leave from his placement. The minor was ordered to begin a new nine-month camp commitment. The juvenile court did not comment on the maximum term of physical confinement and did not award predisposition credits. The September 30, 2008 minute order, however, states that the placement was with a maximum period of confinement of 4 years and 4 months, and the minor received 225 days of predisposition credit.

III. DISCUSSION

A. Maximum Confinement Term

As noted above, the juvenile court's disposition of the section 777 petition as reflected in the reporter's transcript did not include a maximum confinement term. The orally imposed disposition controls over that recorded by the clerk. (*People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2; *People v. Mesa* (1975) 14 Cal.3d 466, 471.) We asked the parties to brief the question whether this case must be remanded to the juvenile court for a determination of the maximum period of confinement. Pursuant to section 726, subdivision (c), when a minor is removed from the custody of his or her parents, the juvenile court must specify that the youngster may not be confined for a period longer

than the maximum imprisonment term that could be imposed on an adult offender. (*In re Manzy W.* (1997) 14 Cal.4th 1199, 1205; *In re Jovan B.* (1993) 6 Cal.4th 801, 809-810.) The juvenile court must state orally on the record and note in the minutes the maximum period of physical confinement. (§ 726, subd. (c); Cal. Rules of Court, rule 5.795 (b).) (All further references to a rule are to the California Rules of Court.) In addition, grand theft is punishable alternatively as a felony or a misdemeanor. (Pen. Code, §§ 18, 489, subd. (b).) Thus, the juvenile court was required to expressly declare on the record whether the offenses were misdemeanors or felonies. (§ 702; rules 5.780 (e)(5), 5.790 (a)(1); *In re Manzy W.*, *supra*, 14 Cal.4th at pp. 1201, 1203-1204; *In re Kenneth H.* (1983) 33 Cal.3d 616, 618-619; *In re Eduardo D.* (2000) 81 Cal.App.4th 545, 548-549, disapproved on another point in *In re Jesus O.* (2007) 40 Cal.4th 859, 867.) Section 702 provides in pertinent part, “If the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or felony.” The Supreme Court had held: “[S]peaking generally, the record in a given case may show that the juvenile court, despite its failure to comply with the statute, was aware of, and exercised its discretion to determine the felony or misdemeanor nature of a wobbler. In such case, when remand would be merely redundant, failure to comply with the statute would amount to harmless error. We reiterate, however, that setting of a felony-length maximum term period of confinement, by itself, does not eliminate the need for remand when the statute has been violated. The key issue is whether the record as a whole establishes that the juvenile court was aware of its discretion to treat the offense as a misdemeanor and to state a misdemeanor-length confinement limit.” (*In re Manzy W.*, *supra*, 14 Cal.4th at p. 1209.) Unless the record demonstrates the juvenile court’s awareness of its discretion, a remand is required. On remand, the juvenile court must declare whether the offenses would, in the case of an adult offender, be punishable as misdemeanors or felonies and determine the maximum period of physical confinement.

(*In re Manzy W.*, *supra*, 14 Cal.4th at pp. 1204-1209; *In re Kenneth H.*, *supra*, 33 Cal.3d at p. 620; *In re Eduardo D.*, *supra*, 81 Cal.App.4th at p. 549.)

Here, we have no record of the manner in which grand theft of an automobile was alleged in the section 602 petition. The grand theft of personal property offense, on the other hand, was alleged to be a felony. At the adjudication hearing, the juvenile court found the minor guilty of “the crime of grand theft of personal property, in violation of Penal Code section 487 (a), a felony.” At the disposition hearing, however, the juvenile court did not expressly state on the record that it was exercising its discretion to determine the level of the grand theft wobbler offenses. This was a failure to comply with section 702. Moreover, the error was not harmless. We cannot conclude with any certainty that the record reflects the juvenile court’s awareness and exercise of its section 702 discretion. Neither a pleading alleging a felony-level offense nor a minute order reflecting a felony-level disposition substitutes for the juvenile court’s declaration that it found the offenses to be felonies. (*In re Manzy W.*, *supra*, 14 Cal.4th at p. 1208; *In re Kenneth H.*, *supra*, 33 Cal.3d at pp. 619-620; *In re Eduardo D.*, *supra*, 81 Cal.App.4th at p. 549.) The juvenile court’s finding the grand theft of personal property allegation was true and its recitation of the pleading language, as here, also does not substitution for an exercise of its section 702 discretion. (*In re Kenneth H.*, *supra*, 33 Cal.3d at pp. 619-620; *In re Ricky H.* (1981) 30 Cal.3d 176, 191-192.) Therefore, upon remittitur issuance, the juvenile court is to expressly determine the character of both the grand theft offenses and the maximum confinement period.

B. Predisposition Custody Credits

The minor argues the juvenile court failed to award the correct amount of predisposition custody credit. The minor contends he was entitled to 254 days of predisposition credit. The California Supreme Court has held that a minor is entitled to credit for the time he was detained in juvenile hall pending resolution of the allegations in

the delinquency petition. (*In re Ricky H.*, *supra*, 30 Cal.3d at p. 184; *In re Deborah C.* (1981) 30 Cal.3d 125, 140; *In re Eric J.* (1979) 25 Cal.3d 522, 536.) We have held, “It is the juvenile court’s duty to calculate the number of days earned, and the court may not delegate that duty. (Pen. Code, § 2900.5, subd. (d); *People v. Vargas* (1988) 204 Cal.App.3d 1455, 1469, fn. 9.” (*In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067; accord, *In re John H.* (1992) 3 Cal.App.4th 1109, 1111.) As noted above, the juvenile court did not orally award predisposition credits. However, we can correct a legally unauthorized dispositional order whenever the error comes to our attention. (*In re Ricky H.*, *supra*, 30 Cal.3d at p. 191; *People v. Serrato* (1973) 9 Cal.3d 753, 763-765, disapproved on another point in *People v. Fosselman* (1983) 33 Cal.3d 572, 583, fn. 1; *In re Sandel* (1966) 64 Cal.2d 412, 417-418.)

As the Attorney General correctly notes, it is unclear exactly when the minor was in custody. Compounding matters is that there is no calculation of the maximum period of confinement against which the credits would apply. Upon remittitur issuance, the juvenile court is to calculate the correct amount of predisposition credits.

IV. DISPOSITION

The dispositional order is reversed in part. The matter is remanded for a determination under Welfare and Institutions Code section 702 whether the offenses are misdemeanors or felonies, to set the maximum confinement term, and to award predisposition credits. The dispositional order is affirmed in all other respects.

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TURNER, P. J.

We concur:

MOSK, J.

KRIEGLER, J.